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MAY 29 1943

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 513

GRANT LUNCH CORPORATION,

Petitioner,

vs.

ALFRED E. DRISCOLL, Commissioner of the State Department of Alcoholic Beverage Control,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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Petition for Writ of Certiorari.

Supreme Court of the United States

GRANT LUNCH CORPORATION, Petitioner, *vs.* ALFRED E. DRISCOLL, Commissioner of the State Department of Alcoholic Beverage Control, Respondent.	Petition for Writ of Certiorari.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Grant Lunch Corporation respectfully shows unto your Honors:

A.

Summary Statement of the Matter Involved.

Respondent, Commissioner of the State Department of Alcoholic Beverage Control by order dated June 12, 1942, suspended for a period of five days petitioner's plenary retail consumption license (R., p. 29).

The Commissioner charged that petitioner, in violation of Regulation No. 30, had sold a half gallon bottle of Hiram Walker "93" Rye whiskey for $3.19 instead of $3.29 (R., p. 23).

The regulations in question were promulgated under the authority vested by the New Jersey Legislature (L. 1938,

c. 208, p. 492; R. S. 33: 1-23.1) in the Commissioner to prohibit or regulate the sale of alcoholic beverages in violation of prices established under the "fair trade" act (L. 1935, c. 58; R. S. 56: 4-5). That act, in its first section, validated agreements between producers and retailers establishing retail prices. By another section, it was made "unfair competition" for any retailer, "wilfully and knowingly" to sell below the stipulated price. Regulations No. 30 established the mechanics by which price contracts, affecting alcoholic beverages, could be registered with the Department, and prohibited retailers from selling thereafter ". . . except (a) at the price stipulated therein by the manufacturer or wholesaler . . ."

The Commissioner, in suspending petitioner's license, found that the latter's action was neither wilful nor deliberate (R., p. 29 at 30).

The petitioner made application to the New Jersey Supreme Court for a writ of *certiorari* to review the respondent's determination that petitioner was guilty of a violation of Regulations No. 30 notwithstanding the fact that the sale was not made wilfully and knowingly (R., p. 1). Petitioner based his application for the writ on the grounds that: (1) the regulations did not apply to innocent, as distinguished from wilful and knowing, sales below price, and (2) the regulations, when so applied, deprived petitioner of its property without due process of law, in failing to express their scope and application to such cases with the clarity and precision requisite for penal enactments (R., p. 1).

From the Supreme Court's denial of the petition for a writ of *certiorari,* petitioner appealed to the New Jersey Court of Errors and Appeals which, in turn, affirmed the decision of the New Jersey Supreme Court. The opinion

of the New Jersey Supreme Court is set forth in 129 N. J. L. 408 (January 27, 1943) and the opinion of the New Jersey Court of Errors and Appeals is reported in 130 N. J. L. 554 (September 16, 1943). The suspension order against the petitioner has been stayed by the respondent pending the final determination of these proceedings (R., p. 36).

B.

Basis of Jurisdiction.

(a) The statute under which jurisdiction is conferred is Section 237 of the Judicial Code, as amended (28 U. S. C. A. §344b).

(b) This application concerns the validity of New Jersey State Department of Alcoholic Beverage Control Regulations No. 30, and particularly paragraph 6 thereof, over the objection that, as applied to the petitioner, the same violates Section 1 of Article XIV of the Amendments to the United States Constitution. Regulations No. 30 and the statutes referred to in the foregoing statement of the matter are printed as Appendices A, B and C and will be found on pages 18 to 23 hereof.

(c) The Court of Errors and Appeals is the State of New Jersey's court of last resort. Its order affirming the New Jersey Supreme Court was entered the 22nd day of September, 1943 (R., p. 83). The opinion is reported in 130 N. J. L. 554.

(d) The objection that Regulation No. 30, as applied to petitioner, violates due process of law guaranteed by the United States Constitution was raised, in the New Jersey Supreme Court, in the petition for a writ of certiorari (R., p. 1, at 3), and, in the New Jersey Court of Errors and Appeals, was assigned as a reason for reversal (R., p. 73,

at 74). This objection was referred to and overruled in the opinion of the New Jersey Supreme Court (R., p. 59, at 60) and that opinion was affirmed, *per curiam*, by the New Jersey Court of Errors and Appeals.

C.

Questions Presented.

1. Whether Regulations No. 30 violate due process of law when applied to a sale which was not wilfully and knowingly made below price.

2. Whether Regulations No. 30 express their scope and application to such cases with the clarity and precision required of penal measures under the due process clause.

D.

Reasons Relied On for Allowance of Writ.

New Jersey Court of Errors and Appeals, affirming the New Jersey Supreme Court, decided that the respondent had properly determined that Regulations No. 30 had been violated by petitioner, and that the regulations, so applied, did not violate due process of law, guaranteed under the United States Constitution.

In so holding, the court decided a federal question of substance in a way not in accord with the applicable decisions of this court.

E.

Prayer.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Errors and

Appeals of the State of New Jersey commanding that Court to certify and to send a full and complete transcript of the record and all proceedings in this cause to this Court for its review and consideration, and that the determination and order of the Court of Errors and Appeals of the State of New Jersey be reversed by this Honorable Court, and that petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray, etc.

GRANT LUNCH CORPORATION,

By MORRIS M. SCHNITZER,
Counsel for Petitioner.